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PTO/SB/64 (10-01)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

10457-011

First named inventor: **Parker Small et al.**

Application No.: **09/936,954**

Art Unit: **1645**

Filed: **1/24/2002**

Examiner: **Robert Zeman**

Title: **Rapid Diagnostic Method for Distinguishing Allergies and**

Attention: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ **665.00** (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of **Response to Restriction Required** (identify type of reply):

- ☐ has been filed previously on _____.
- ☒ is enclosed herewith.

B. The issue fee of \$ _____.

- ☐ has been paid previously on _____.
- ☐ is enclosed herewith.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE. The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

7-26-04

Date

Telephone
Number: (407) 926-7726



Signature

Timothy H. Van Dyke

Typed or printed name

390 N. Orange Avenue, Suite 2500

Address

Orlando, FL 32801

Enclosures: ☒ Fee Payment

- ☐ Reply
- ☐ Terminal Disclaimer Form
- ☐ Additional sheets containing statements establishing unintentional delay
- ☐ Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☒ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

7-26-04

Date



Signature

Alicia Hoffman

Type or printed name of person signing certificate



Serial No. 09/936,954

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Confirmation No. 3992

Applicants: Parker Small et al.

Examiner: R. Zeman

Serial No.: 09/936,954

Art Unit: 1645

Filed: 1/24/2002

For: RAPID DIAGNOSTIC METHOD FOR
DISTINGUISHING ALLERGIES AND INFECTIONS

Commissioner for Patents

P. O. Box 1450

Arlington, Virginia 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT AND PRELIMINARY AMENDMENT

In response to the Restriction Requirement dated November 28, 2003,
Applicants provide the following amendments and remarks:

In the Specification

Replace title of the invention with the following:

RAPID DIAGNOSTIC METHOD FOR DETECTING BACTERIAL SINUSITIS
~~DISTINGUISHING ALLERGIES AND INFECTIONS~~

In the claims

Claims 1-15 (cancelled)

16. (new) A method for detecting bacterial sinusitis, said method comprising obtaining a nasal secretion sample from a patient; and measuring said nasal secretion sample for pH, protein content, nitrite content, and leukocyte esterase activity; wherein a pH between 7.5 and 9, and a moderately strong presence of protein, nitrite or leukocyte esterase activity is indicative of bacterial sinusitis.

Remarks

Originally filed claims 1-15 are cancelled above. Support for new claim 16 is found throughout the application, and particularly at pages 14 and 15 and Figure 2. In view of the foregoing amendments to the claims, Applicants respectfully point out that the outstanding restriction requirement is effectively obviated, and respectfully request that such restriction requirement be withdrawn. Applicant respectfully requests examination of new claim 16.

Furthermore, Applicants note that, as a question of style, and in no way to be used as an interpretation of the scope of the pending claim(s), Applicants have amended the title of the invention section.

Applicant believes that claim 16 is in a condition for allowance, and respectfully asks that a Notice of Allowance be issued. If the Examiner should have any questions, or require any additional information, Applicants ask that the Examiner contact the undersigned attorney.

Respectfully submitted,



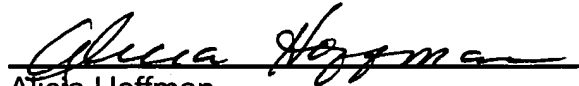
Timothy H. Van Dyke
Reg. No. 43,218
Beusse, Brownlee, Wolter, Mora & Maire P.A.
390 N. Orange Avenue, Suite 2500
Orlando, FL 32801
Phone: (407) 926-7726



Serial No. 09/936,954

CERTIFICATE OF MAILING

I HEREBY CERTIFY that this RESPONSE TO RESTRICTION REQUIREMENT is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Mail Stop Missing Parts, Arlington, Virginia 22313-1450, 26th day of July 2004.


Alicia Hoffman